

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LAN N. MARKOVICH
Claimant

VS.

ORION FITTINGS, INC.
Respondent

AND

TRAVELERS INSURANCE CO.
DODSON INSURANCE GROUP
FIREMAN'S FUND INSURANCE CO.
SUPERIOR NATIONAL INSURANCE CO.
AIG CLAIMS SERVICES
Insurance Carrier

Docket No. 202,816

ORDER

This case comes before the Board on remand from the Court of Appeals. The Court of Appeals' opinion was filed October 8, 2004. The Kansas Supreme Court denied a petition for review on March 1, 2005. After affording the parties the opportunity to request oral argument and file briefs, the case was placed on the summary docket on August 24, 2005, for a decision without oral argument.

APPEARANCES

Dennis L. Horner of Kansas City, Kansas, appeared for the claimant. Mark E. Kolich of Kansas City, Kansas appeared for respondent and Dodson Insurance Group (Dodson). Matthew S. Crowley of Topeka, Kansas, appeared for respondent and Superior National Insurance Co. (Superior). Randall W. Schroer of Kansas City, Missouri, appeared for respondent and Travelers Insurance Co. (Travelers). Terry J. Torline of Wichita, Kansas, appeared for respondent and Fireman's Fund Insurance Co. (Fireman's). David F. Menghini of Kansas City, Kansas, appeared for respondent and AIG Claims Services (AIG).

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge (ALJ) awarded claimant compensation for a scheduled injury to the left upper extremity and a separate scheduled injury to the right upper extremity. On review the Board modified the award to provide compensation for a single whole body injury.

Claimant had alleged a series of repetitive injuries to her upper extremities beginning in May 1992 and continuing each and every day worked before the date of the regular hearing on February 5, 2002. During this extended period of time, the respondent's workers compensation insurance coverage was provided by five different insurance carriers with six periods of coverage.

The Board concluded that claimant suffered additional aggravation to her upper extremities each time she returned to the same job she had performed before her various treatments and surgeries. Because claimant continued to aggravate her condition after each surgery, the Board determined the last day worked rule was applicable and assessed payment of permanent partial disability compensation against AIG, the last insurance carrier to provide coverage. The Board further determined each insurance carrier was responsible for payment of the benefits incurred during its period of coverage such as medical expenses or temporary total disability compensation benefits.

The Court of Appeals affirmed the date of injury ruling but determined that claimant was entitled to disability benefits based on two separate scheduled injuries and not a single permanent whole body disability. Consequently, the Court of Appeals remanded the case to the Board "to recalculate the award based on two scheduled injuries."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

On December 26, 2000, Dr. Prostic examined claimant and reiterated that it was his opinion that her ongoing employment activities since May 1992 caused claimant repeated

minor trauma to both upper extremities. The doctor noted claimant had lateral epicondylectomy of the left elbow, median and ulnar decompression of the right wrist and decompressive surgery to the right shoulder. And the doctor noted on examination claimant evidenced recurring entrapment of the median and ulnar nerves of the right upper extremity for which he recommended additional diagnostic testing and likely additional decompressive surgery. The doctor rated claimant at 30 percent to her right upper extremity and 10 percent to her left upper extremity. Because Dr. Prostic provided the only rating after claimant's last surgery, the Board adopted his opinion.

Accordingly, claimant is entitled to compensation for a 30 percent scheduled disability to her right upper extremity and a 10 percent scheduled disability to her left upper extremity. As previously determined, each separate carrier was assessed liability for the temporary total disability compensation and medical compensation incurred during its respective period of coverage. As a result, AIG is only responsible for the permanent partial disability compensation awarded for each separate scheduled injury.

AWARD

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Robert H. Foerschler dated September 16, 2002, is modified to reflect that claimant has suffered a 30 percent scheduled disability to her right upper extremity and a 10 percent scheduled disability to her left upper extremity.

The claimant is entitled to 17.86 weeks of temporary total disability compensation at the rate of \$215.57 per week in the amount of \$3,849.06 paid by Dodson followed by 19.21 weeks of permanent partial disability compensation at the rate of \$286.88 per week, in the amount of \$5,510.96 to be paid by AIG for a 10 percent loss of use of the left arm, making a total award of \$9,360.02, which is ordered paid in one lump sum less amounts previously paid.

The claimant is entitled to 5.29 weeks of temporary total disability compensation at the rate of \$242.95 per week or \$1,284.16 plus 1.14 weeks of temporary total disability compensation at the rate of \$264.74 per week or \$278.88 paid by Fireman's plus 4.14 weeks of temporary total disability compensation at the rate of \$262.66 or \$1,087.44 paid by Superior followed by 64.33 weeks of permanent partial disability compensation at the rate of \$286.88 per week, in the amount of \$18,454.99 to be paid by AIG for a 30 percent loss of use of the right shoulder, making a total award of \$21,105.47, which is ordered paid in one lump sum less amounts previously paid.

IT IS SO ORDERED.

Dated this _____ day of September 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Dennis L. Horner, Attorney for Claimant
Mark E. Kolich, Attorney for Respondent and Dodson Insurance Group
Matthew S. Crowley, Attorney for Respondent and Superior National Insurance
Randall W. Schroer, Attorney for Respondent and Travelers Insurance
Terry J. Torline, Attorney for Respondent and Fireman's Fund Insurance
David F. Menghini, Attorney for Respondent and AIG Claims Services
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director